

1974 WL 27808 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 6, 1974

*1 Section 65-688, as amended in 1974, requires that documentary stamps be affixed to mortgages executed in this State in an amount equivalent to the debt and lien created by such execution. The section also requires that documentary stamps be affixed for the privilege of recording mortgages executed in another state and the debt and lien in this State protected by recording is believed to be the proper stamp meaning.

Gene V. Pruet, Esq.

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Attorneys and Counselors at Law
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Dear Gene:

Reference is made to your letter of June 4 to Mr. Wasson, a copy of which you forwarded to this office concerning documentary stamps. Yesterday morning I discussed the same with the Commission and gave them verbally the legal opinion of this office which they acquiesced in. They further asked that I furnish the same in writing to them and to you.

You have briefly outlined a transaction and have requested a ruling that documentary stamps be required under Section 65-688 of the 1962 South Carolina Code of Laws as amended in 1974 only to the extent of the consideration represented by South Carolina property and the amount of lien secured by property in South Carolina. The transaction is one concerning a loan of a large amount of money which is secured by an Indenture of Mortgage, Deed of Trust and Security Instrument of fifty parcels of property located in seventeen states. The closing of the loan will take place wholly without the State of South Carolina. The Indenture of Mortgage will be recorded in South Carolina.

It is proposed that the following be expressed on the face of the Indenture of Mortgage:

'The maximum consideration advanced with respect to property in South Carolina and the maximum debt secured by the lien of this Indenture of Mortgage, Deed of Trust and Security Instrument in respect to property in South Carolina is the sum of \$_____.'

Within the body of the Indenture, the following would also be inserted:

'Section _____. Maximum Consideration for and Lien on South Carolina Property. The maximum consideration advanced with respect to property in South Carolina under this Indenture of Mortgage, Deed of Trust and Security Instrument and the maximum indebtedness secured by the lien of this instrument on property in South Carolina is \$_____, anything herein to the contrary notwithstanding; but this provision does not limit the lien of this instrument as to any property located otherwise than in South Carolina.'

Section 65-688 taxes mortgages executed or recorded within this State. The incidence of taxation, therefore, is the creation of a mortgage if the same occurs within the State and if the mortgage is not created or executed here, then the taxing incident is for the privilege of recording the mortgage. In both, the measure of the tax is the consideration expressed.

*2 Recording a mortgage in the State protects the holder to the extent provided, notwithstanding that the same may also have provisions which may be enforced in another state. The consideration thus expressed for the debt and lien in this State protected by recording is believed to be the proper stamp measure when the privilege of recording is the incidence of taxation. It is, therefore, concluded that under the transaction here set out, the South Carolina consideration and property is the proper measure of documentary stamps. We further are of opinion that inasmuch as the note secured by the proposed indenture is completely executed without the State, the same is not subject to documentary stamps.

Gene, if there are any further questions concerning taxation of this transaction, this office will be more than glad to give its assistance.

Yours truly,

G. Lewis Argoe, Jr.
Assistant Attorney General

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